

# House Amendment 8380

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1 1 Amend House File 2663 as follows:  
1 2 #1. Page 1, by inserting before line 1 the  
1 3 following:  
1 4 <Section 1. Section 84A.5, subsection 4, Code  
1 5 Supplement 2007, is amended to read as follows:  
1 6 4. The division of labor services is responsible  
1 7 for the administration of the laws of this state under  
1 8 chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91, 91A,  
1 9 91C, 91D, 91E, 91F, 92, and 94A, and section 85.68.  
1 10 The executive head of the division is the labor  
1 11 commissioner, appointed pursuant to section 91.2.  
1 12 Sec. 2. NEW SECTION. 91F.1 SHORT TITLE.  
1 13 This chapter shall be known and may be cited as the  
1 14 "Public Improvement Quality Protection Act".  
1 15 Sec. 3. NEW SECTION. 91F.2 PUBLIC POLICY.  
1 16 It is in the public interest that public  
1 17 improvements are completed by the best means and  
1 18 highest quality of labor reasonably available, and  
1 19 that workers working on public improvements be  
1 20 compensated according to the real value of the  
1 21 services they perform.  
1 22 Sec. 4. NEW SECTION. 91F.3 DEFINITIONS.  
1 23 As used in this chapter, unless the context  
1 24 otherwise requires:  
1 25 1. "Commissioner" means the labor commissioner  
1 26 appointed pursuant to section 91.2.  
1 27 2. "Contractor" or "subcontractor" means a person  
1 28 who undertakes, offers to undertake, purports to have  
1 29 the capacity to undertake, or submits a bid,  
1 30 individually or through others, to engage in a public  
1 31 improvement.  
1 32 3. "Custom fabrication" means the fabrication of  
1 33 plumbing, heating, cooling, ventilation, architectural  
1 34 systems, structural systems, exhaust duct systems, or  
1 35 mechanical insulation.  
1 36 4. "Division" means the division of labor services  
1 37 of the department of workforce development.  
1 38 5. a. "Fringe benefits" means the following for  
1 39 the provision or purchase of any of the benefits  
1 40 enumerated in paragraph "b":  
1 41 (1) The contribution irrevocably made by a  
1 42 contractor or subcontractor to a trustee or to a third  
1 43 person pursuant to a plan, fund, or program.  
1 44 (2) The costs to the contractor or subcontractor  
1 45 which may be reasonably anticipated in providing  
1 46 benefits to workers pursuant to an enforceable  
1 47 commitment to carry out a financially responsible plan  
1 48 or program, given in writing to the workers affected.  
1 49 b. (1) Medical or hospital care.  
1 50 (2) Pensions or annuities on retirement or death.  
2 1 (3) Life insurance.  
2 2 (4) Disability and sickness insurance.  
2 3 (5) Accident insurance for nonwork-related  
2 4 accidents.  
2 5 (6) Vacation or holiday pay.  
2 6 (7) Defraying costs of apprenticeship programs  
2 7 approved by and registered with the United States  
2 8 department of labor's bureau of apprenticeship and  
2 9 training.  
2 10 6. "Interested party" means any of the following:  
2 11 a. A contractor who submits a bid for the purpose  
2 12 of securing the award of a contract for a public  
2 13 improvement.  
2 14 b. A subcontractor of a contractor mentioned in a  
2 15 bid referred to in paragraph "a".  
2 16 c. A worker employed by a contractor or  
2 17 subcontractor described in either paragraph "a" or  
2 18 "b".  
2 19 d. A labor organization that represents workers  
2 20 engaged in the same craft or classification as workers  
2 21 employed by a contractor or subcontractor described in  
2 22 either paragraph "a" or "b" and that exists, in whole  
2 23 or in part, for the purpose of negotiating with  
2 24 employers concerning the wages, hours, or terms and

2 25 conditions of employment of employees.  
2 26 e. A joint labor-management committee established  
2 27 pursuant to the federal Labor Management Cooperation  
2 28 Act of 1978, 29 U.S.C. } 175a.  
2 29 7. "Locality" means a county of this state.  
2 30 8. "Maintenance work" means the repair of existing  
2 31 public improvements when the size, type, or extent of  
2 32 the public improvement is not changed or increased.  
2 33 9. "Prevailing wage rate" means the hourly wage  
2 34 plus fringe benefits, which the commissioner  
2 35 determines prevails in accordance with this chapter,  
2 36 including all of the following:  
2 37 a. Apprentice ratios and the prevailing apprentice  
2 38 pay levels for each craft, classification, or type of  
2 39 worker which the commissioner determines prevails in  
2 40 accordance with section 91F.5.  
2 41 b. A prevailing rate for overtime pay for work in  
2 42 excess of the normal prevailing workday and for  
2 43 weekend overtime pay for each craft, classification,  
2 44 or type of worker, including apprentices.  
2 45 c. Holiday pay for holidays that prevail in the  
2 46 locality in which the work is being performed.  
2 47 10. "Public body" means a school district.  
2 48 11. a. "Public improvement" means any of but not  
2 49 limited to the following that meets the criteria set  
2 50 out in paragraphs "b" and "c":  
3 1 (1) Construction, alteration, reconstruction,  
3 2 repair, rehabilitation, refinishing, refurbishing,  
3 3 remodeling, renovation, custom fabricating,  
3 4 maintenance, landscaping, improving, moving, wrecking,  
3 5 painting, decorating, or demolishing of, or adding to  
3 6 or subtracting from any building, structure, sewer,  
3 7 ditch, parking facility, railroad, excavation or other  
3 8 structure, project, development, or improvement, or  
3 9 any part thereof undertaken by a public body,  
3 10 including any of but not limited to the following  
3 11 related activities:  
3 12 (a) The erection of scaffolding or other  
3 13 structures or works.  
3 14 (b) The maintenance, repair, assembly, or  
3 15 disassembly of equipment.  
3 16 (c) The testing of materials.  
3 17 (d) The hauling of refuse from a site to an  
3 18 outside disposal location.  
3 19 (e) The cleaning of grounds or structures.  
3 20 (f) The addition to or fabrication into any  
3 21 structure, project, development, or improvement of any  
3 22 material or article of merchandise undertaken by a  
3 23 public body.  
3 24 (2) The preparation and removal of roadway  
3 25 construction zones, lane closures, flagging, or  
3 26 traffic diversions undertaken by a public body.  
3 27 (3) The installation, repair, maintenance, or  
3 28 calibration of monitoring equipment for underground  
3 29 storage tanks undertaken by a public body.  
3 30 (4) Work that is performed on any property or  
3 31 premises dedicated exclusively or nearly so to the  
3 32 completion of a public improvement, and transportation  
3 33 of supplies, material, and equipment to or from the  
3 34 property or premises undertaken by a public body.  
3 35 b. Work on the public improvement is performed  
3 36 under public supervision or direction, and the work is  
3 37 financed wholly or in part from public funds, or if at  
3 38 the time of commencement of the public improvement all  
3 39 of the following conditions with respect to the public  
3 40 improvement are met:  
3 41 (1) Not less than fifty-five percent of the  
3 42 structure is leased by a public body, or is subject to  
3 43 an agreement to be subsequently leased by a public  
3 44 body.  
3 45 (2) The portion of the structure that is leased or  
3 46 subject to an agreement to be subsequently leased by a  
3 47 public body measures more than twenty thousand square  
3 48 feet.  
3 49 c. The public improvement project is funded by a  
3 50 school district and the estimated total cost is three  
4 1 hundred thousand dollars or more.  
4 2 12. "Worker" means an individual who performs any  
4 3 labor or services for a contractor or subcontractor on  
4 4 a public improvement but does not include an  
4 5 individual when transporting supplies, materials, or

4 6 equipment for a seller, supplier, manufacturer, or  
4 7 processor. The individual is deemed an employee of a  
4 8 contractor or subcontractor unless all of the  
4 9 following apply:

4 10 a. The individual provides labor or services free  
4 11 from the direction or control over the means and  
4 12 manner of providing the labor or services, subject  
4 13 only to the right of the person for whom the labor or  
4 14 services are provided to specify the desired results.

4 15 b. The individual providing the labor or services  
4 16 is responsible for obtaining business registrations or  
4 17 licenses required by state law or local ordinance to  
4 18 provide the labor or services.

4 19 c. The individual providing the labor or services  
4 20 furnishes the tools and equipment necessary to provide  
4 21 the labor or services.

4 22 d. The individual providing the labor or services  
4 23 has the authority to hire and fire employees to  
4 24 perform the labor or services.

4 25 e. Payment for the labor or services is made upon  
4 26 completion of the performance of specific portions of  
4 27 a public improvement, or is made on the basis of a  
4 28 periodic retainer.

4 29 f. The individual providing the labor or services  
4 30 represents to the public that the labor or services  
4 31 are to be provided by an independently established  
4 32 business. An individual is engaged in an  
4 33 independently established business when four or more  
4 34 of the following circumstances exist:

4 35 (1) Labor or services are primarily performed at a  
4 36 location separate from the individual's residence or  
4 37 in a specified portion of the residence that is set  
4 38 aside for performing labor or services.

4 39 (2) Commercial advertising or business cards are  
4 40 purchased by the individual, or the individual is a  
4 41 member of a trade or professional association.

4 42 (3) Telephone or electronic mail listings used by  
4 43 the individual for the labor or services are different  
4 44 from the individual's personal listings.

4 45 (4) Labor or services are performed only pursuant  
4 46 to a written contract.

4 47 (5) Labor or services are performed for two or  
4 48 more persons or entities within a period of one year.

4 49 (6) The individual assumes financial  
4 50 responsibility for errors and omissions in the  
5 1 performance of the labor or services as evidenced by  
5 2 insurance, performance bonds, and warranties relating  
5 3 to the labor or services provided.

5 4 Sec. 5. NEW SECTION. 91F.4 ADMINISTRATION.

5 5 The commissioner and the division shall administer  
5 6 this chapter and the commissioner shall adopt rules  
5 7 for the administration and enforcement of this chapter  
5 8 as provided in section 91.6.

5 9 Sec. 6. NEW SECTION. 91F.5 DETERMINATION OF  
5 10 PREVAILING WAGES.

5 11 1. The commissioner shall determine annually and  
5 12 publish, on the first business day of July, the  
5 13 prevailing wage rates by locality for each craft,  
5 14 classification, or type of worker needed to perform  
5 15 work on public improvements. The rates shall be  
5 16 conclusive for one year from the date of publication  
5 17 unless superseded within the one year by a later  
5 18 publication of the commissioner, or for a longer  
5 19 period as provided in subsection 5.

5 20 2. The commissioner shall announce all prevailing  
5 21 wage rate determinations by locality and give notice  
5 22 by posting them on the portion of the department of  
5 23 workforce development's website related to the  
5 24 division. A printed version of the prevailing wage  
5 25 rates for the state shall be available to the public  
5 26 upon request to the division.

5 27 3. The public body awarding any contract for a  
5 28 public improvement, or otherwise undertaking any  
5 29 public improvement, shall obtain from the website the  
5 30 prevailing wage rate in the locality in which the  
5 31 public improvement is to be performed for each craft,  
5 32 classification, or type of worker needed to perform  
5 33 work on the public improvement. After a public  
5 34 improvement contract is awarded, or a public  
5 35 improvement is otherwise undertaken, the prevailing  
5 36 wage rate published by the commissioner and stated in

5 37 the public body's public improvement procurement  
5 38 documents shall remain in effect throughout the  
5 39 duration of the public improvement unless superseded  
5 40 by a later determination and publication by the  
5 41 commissioner, or unless multiyear prevailing wage  
5 42 rates have been published by the commissioner at the  
5 43 time the public improvement procurement documents were  
5 44 released.

5 45 4. a. In determining the annual prevailing wage  
5 46 rate for any craft, classification, or type of worker,  
5 47 the commissioner shall ascertain and consider the  
5 48 applicable wage rates and fringe benefits established  
5 49 by collective bargaining agreements, the prevailing  
5 50 wage rate determinations that may exist for federal  
6 1 public improvements within the locality and other data  
6 2 obtained by the department during any prevailing wage  
6 3 rate survey of contractors who participate in an  
6 4 apprenticeship program approved by and registered with  
6 5 the United States department of labor's bureau of  
6 6 apprenticeship and training, who provide health  
6 7 insurance and retirement benefits for their workers,  
6 8 and who are registered with the division. Based upon  
6 9 these considerations, the commissioner shall calculate  
6 10 the prevailing wage rates based on the wage rate plus  
6 11 fringe benefits most often occurring for each craft,  
6 12 classification, or other type of worker within each  
6 13 locality.

6 14 b. The minimum annual prevailing wage rate  
6 15 determination established by the department shall not  
6 16 be lower than the prevailing wage rate determination  
6 17 that may exist for federal public improvements within  
6 18 the locality.

6 19 c. Notwithstanding other provisions of this  
6 20 chapter, except for the threshold criteria of section  
6 21 91F.3, subsection 11, paragraph "c", federal  
6 22 Davis-Bacon Act prevailing wage rates and procedures,  
6 23 as defined in 29 C.F.R. pts. 1, 3, and 5, and  
6 24 administered by the public body, shall apply to public  
6 25 improvements that are publicly owned horizontal  
6 26 transportation infrastructure, which includes but is  
6 27 not limited to roads and streets as defined in section  
6 28 306.3.

6 29 d. None of the benefits enumerated in this chapter  
6 30 may be considered in the determination of prevailing  
6 31 wage rates if the contractor or subcontractor is  
6 32 required by other federal, state, or local law to  
6 33 provide such benefits.

6 34 5. If the commissioner determines that the  
6 35 prevailing wage rate for any craft, classification, or  
6 36 type of worker is the rate established by a collective  
6 37 bargaining agreement applicable in the locality, the  
6 38 commissioner may adopt that rate by reference and that  
6 39 determination shall be effective for the life of the  
6 40 agreement or until the commissioner adopts another  
6 41 rate.

6 42 6. a. At any time within fifteen days after the  
6 43 division has published on the department of workforce  
6 44 development's website the annual prevailing wage rates  
6 45 for each classification, craft, or other type of  
6 46 worker in the locality, any interested person affected  
6 47 may object to the determination or the part of the  
6 48 determination as the interested person may deem  
6 49 objectionable by filing a written notice with the  
6 50 commissioner by restricted certified mail as defined  
7 1 in section 618.15. When objecting to a prevailing  
7 2 wage rate determination, the interested person shall  
7 3 submit, as a part of the written notice, the  
7 4 prevailing wage rate the interested person believes to  
7 5 be the correct prevailing wage rate determination,  
7 6 stating the specific grounds to support that position.  
7 7 Upon receipt of the notice of objection, the  
7 8 commissioner shall reconsider the determination and  
7 9 shall affirm or modify the determination and reply in  
7 10 writing by restricted certified mail to the interested  
7 11 person within fifteen days from the date of the  
7 12 receipt of the notice of objection. Any modification  
7 13 to the prevailing wage rate determination shall be  
7 14 effective on the date the modification is published by  
7 15 the commissioner.

7 16 b. If the commissioner declines to modify the  
7 17 determination, within ten days upon receiving receipt

7 18 of the commissioner's decision, the interested person  
7 19 affected may submit in writing the objection to the  
7 20 division by restricted certified mail, stating the  
7 21 specified grounds of the objection. The department of  
7 22 inspections and appeals shall be notified of the  
7 23 objection and set a date for a hearing before an  
7 24 administrative law judge on the objection, after  
7 25 giving notice by restricted certified mail to the  
7 26 interested person and the division at least ten days  
7 27 before the date of the hearing of the time and place  
7 28 of the hearing. The hearing shall be held within  
7 29 forty-five days after the objection is filed, and  
7 30 shall not be postponed or reset for a later date  
7 31 except upon the consent, in writing, of the interested  
7 32 person and the division.

7 33 7. The party requesting a hearing shall have the  
7 34 burden of establishing that the annual prevailing wage  
7 35 rate determination for that locality was not  
7 36 determined in accordance with this chapter. If the  
7 37 party requesting a hearing under this section objects  
7 38 to the commissioner's failure to include a craft,  
7 39 classification, or type of worker within the annual  
7 40 prevailing wage rate determination in the locality,  
7 41 the objector shall have the burden of establishing  
7 42 that there is no existing prevailing wage rate  
7 43 classification for the particular craft,  
7 44 classification, or type of worker in any of the  
7 45 localities under consideration.

7 46 8. The administrative law judge may in the  
7 47 administrative law judge's discretion hear each  
7 48 written objection filed separately or consolidate for  
7 49 hearing any one or more written objections filed with  
7 50 the division. At the hearing, the division shall  
8 1 introduce into evidence the investigation it  
8 2 instituted which formed the basis of its  
8 3 determination, and the division or any interested  
8 4 objectors may introduce evidence that is material to  
8 5 the determination. The administrative law judge shall  
8 6 rule upon each written objection and make a final  
8 7 determination, as the administrative law judge  
8 8 believes the evidence warrants, and promptly serve a  
8 9 copy of the final determination by personal service or  
8 10 restricted certified mail on all parties to the  
8 11 proceedings. The administrative law judge shall  
8 12 render a final determination within thirty days after  
8 13 the conclusion of the hearing.

8 14 9. If proceedings to review judicially the final  
8 15 determination of the administrative law judge are not  
8 16 instituted as provided in this section, the  
8 17 determination shall be final and binding. The  
8 18 provisions of section 17A.19 shall apply to and govern  
8 19 all proceedings. Appeals from all final orders and  
8 20 judgments entered by the court in review of the final  
8 21 determination of the administrative law judge may be  
8 22 taken by any party to the action. In all reviews or  
8 23 appeals under this chapter, the attorney general shall  
8 24 represent the division and defend its determination.

8 25 10. This section does not give reason or provide  
8 26 cause for an injunction to halt or delay any public  
8 27 improvement.

8 28 Sec. 7. NEW SECTION. 91F.6 PAYMENT OF PREVAILING  
8 29 WAGES REQUIRED.

8 30 1. Contractors and subcontractors engaged in a  
8 31 public improvement shall pay not less than the current  
8 32 prevailing wage rates in accordance with this chapter  
8 33 to all of their workers engaged in the public  
8 34 improvement. However, this chapter does not prohibit  
8 35 the payment of more than the prevailing wage rate to  
8 36 any workers engaged in a public improvement.

8 37 2. All contractors and subcontractors required to  
8 38 pay the prevailing wage rate under this chapter shall  
8 39 pay the wages in legal tender, without any deduction  
8 40 for food, sleeping accommodations, transportation, use  
8 41 of tools or safety equipment, vehicle or equipment  
8 42 rental, or any other thing of any kind or description.

8 43 Sec. 8. NEW SECTION. 91F.7 REQUIREMENTS FOR  
8 44 PUBLIC IMPROVEMENTS.

8 45 1. The public body awarding a contract for a  
8 46 public improvement or otherwise undertaking a public  
8 47 improvement shall specify in the call for bids for the  
8 48 contract that this chapter applies to the public

8 49 improvement.

8 50 2. If a public improvement requires the payment of  
9 1 prevailing wage rates, the public body shall require  
9 2 the contractor to execute a written instrument that  
9 3 not less than the prevailing wage rate shall be paid  
9 4 to all workers performing work on the public  
9 5 improvement. The written instrument shall also  
9 6 contain a provision that if it is found that any of  
9 7 the contractor's workers engaged in the public  
9 8 improvement has been paid at a wage rate less than the  
9 9 prevailing wage rate required by this chapter, the  
9 10 public body may terminate the contractor's right to  
9 11 proceed with the work and the contractor and its  
9 12 sureties shall be liable to the public body for any  
9 13 excess costs occasioned by the failure to pay the  
9 14 prevailing wage rate. The written instrument shall  
9 15 have attached a list of the prevailing wage rates in  
9 16 accordance with this chapter for all crafts,  
9 17 classifications, or types of workers in the locality  
9 18 for each worker needed to be included in the contract  
9 19 for the public improvement.

9 20 3. If a contract is let for a public improvement  
9 21 requiring the payment of prevailing wage rates, the  
9 22 public body awarding the contract shall cause to be  
9 23 inserted in the public improvement specifications and  
9 24 contract a stipulation that not less than the  
9 25 prevailing wage rate shall be paid to all workers  
9 26 performing work under the contract. The contract  
9 27 shall also contain a provision to the effect that if  
9 28 it is found that any of the contractor's workers  
9 29 engaged in the public improvement has been paid at a  
9 30 wage rate less than the prevailing wage rate required  
9 31 by this chapter, the public body may terminate the  
9 32 contractor's right to proceed with the work and the  
9 33 contractor and its sureties shall be liable to the  
9 34 public body for any excess costs occasioned by the  
9 35 failure to pay the prevailing wage rate. All bid  
9 36 specifications shall list the prevailing wage rates in  
9 37 accordance with this chapter for all crafts,  
9 38 classifications, or types of workers in the locality  
9 39 for each worker needed to be included in the contract.

9 40 4. If a public improvement requires the payment of  
9 41 prevailing wage rates, the contractor shall require  
9 42 any subcontractors engaged by the contractor on the  
9 43 public improvement to execute a written instrument  
9 44 that not less than the prevailing wage rates shall be  
9 45 paid to all workers performing work on the public  
9 46 improvement. The written instrument shall also  
9 47 contain a provision that if it is found that any of  
9 48 the subcontractor's workers engaged in the public  
9 49 improvement has been paid at a wage rate less than the  
9 50 prevailing wage rate required by this chapter, the  
10 1 public body may terminate the subcontractor's right to  
10 2 proceed with the work and the subcontractor and its  
10 3 sureties shall be liable to the public body for any  
10 4 excess costs occasioned by the failure to pay the  
10 5 prevailing wage rate. The written instrument shall  
10 6 have attached a list of the prevailing wage rates in  
10 7 accordance with this chapter for all crafts,  
10 8 classifications, or types of workers in the locality  
10 9 for each worker needed to be included in the contract.

10 10 5. If a subcontract is let for a public  
10 11 improvement requiring the payment of the prevailing  
10 12 wage rate, the contractor to whom the contract is  
10 13 awarded shall insert into the subcontract and into the  
10 14 public improvement project specifications for each  
10 15 subcontract a written stipulation that not less than  
10 16 the prevailing wage rate shall be paid to all workers  
10 17 performing work under the subcontract. A  
10 18 subcontractor shall insert into each lower-tiered  
10 19 subcontract a stipulation that not less than the  
10 20 prevailing wage rate shall be paid to all workers  
10 21 performing work under the subcontract. The  
10 22 subcontract shall also contain a provision that if it  
10 23 is found that any subcontractor's workers engaged in  
10 24 the public improvement have been paid at a wage rate  
10 25 less than the prevailing wage rate required by this  
10 26 chapter, the public body may terminate the  
10 27 subcontractor's right to proceed with the work and the  
10 28 subcontractor and its sureties shall be liable to the  
10 29 public body for any excess costs occasioned by the

10 30 failure to pay the prevailing wage rate. All bid  
10 31 specifications shall list the prevailing wage rates in  
10 32 accordance with this chapter for all crafts,  
10 33 classifications, or types of workers in the locality  
10 34 for each worker needed to be included in the  
10 35 subcontract.

10 36 6. A contractor or subcontractor engaging in a  
10 37 public improvement shall submit a performance bond in  
10 38 an amount determined by the public body which bond  
10 39 shall include a provision that will guarantee the  
10 40 payment of the prevailing wage rates as required by  
10 41 the contract.

10 42 7. Before final payment is made by or on behalf of  
10 43 a public body of any sum or sums due on a public  
10 44 improvement, the treasurer of the public body or other  
10 45 officer or person charged with the custody and  
10 46 disbursement of the funds of the public body shall  
10 47 require the contractor and subcontractor to file a  
10 48 written statement with the public body, in a form  
10 49 satisfactory to the division, certifying to the  
10 50 amounts then due and owing from the contractor and  
11 1 subcontractor to any and all workers for wages due on  
11 2 account of the public improvement, setting forth the  
11 3 names of the persons whose wages are unpaid and the  
11 4 amount due to each respectively. The statement shall  
11 5 be verified by the oath of the contractor or  
11 6 subcontractor, as the case may be, that the contractor  
11 7 or subcontractor has read the statement certified by  
11 8 the contractor or subcontractor, knows the contents,  
11 9 and that the statement is true in accordance with the  
11 10 contractor's or subcontractor's own knowledge.

11 11 However, this chapter shall not impair the right of a  
11 12 contractor to receive final payment from a public body  
11 13 because of the failure of a subcontractor to comply  
11 14 with provisions of this chapter. The treasurer of the  
11 15 public body or other officer or person charged with  
11 16 the custody and disbursement of the funds of the  
11 17 public body shall withhold the amount, if any, listed  
11 18 on the verified statement filed pursuant to this  
11 19 section for the benefit of the worker whose wages are  
11 20 unpaid as shown by the verified statement filed by the  
11 21 contractor or subcontractor, and the public body shall  
11 22 pay directly to any worker the amount shown by the  
11 23 statement to be due to the worker for the wages.  
11 24 Payment shall discharge the obligation of the  
11 25 contractor or subcontractor to the person receiving  
11 26 the payment to the extent of the amount of the  
11 27 payment.

11 28 8. The public body awarding a contract for a  
11 29 public improvement or otherwise undertaking a public  
11 30 improvement shall notify the commissioner in writing,  
11 31 on a form prescribed by the commissioner, if a  
11 32 contract subject to the provisions of this chapter has  
11 33 been awarded or a public improvement subject to the  
11 34 provisions of this chapter has been undertaken. The  
11 35 public body shall file the notification with the  
11 36 commissioner within thirty days after the contract is  
11 37 awarded or before commencement of the public  
11 38 improvement, and shall include a list of all  
11 39 first-tier subcontractors.

11 40 Sec. 9. NEW SECTION. 91F.8 FEDERAL PUBLIC  
11 41 IMPROVEMENTS == NOT APPLICABLE.

11 42 The provisions of this chapter shall not be  
11 43 applicable to public improvements financed entirely by  
11 44 federal funds which require a prevailing wage rate  
11 45 determination by the United States department of  
11 46 labor. However, unless a federal provision applies,  
11 47 if a public improvement is financed in part by a  
11 48 public body and in part by federal funds, the higher  
11 49 of the prevailing wage rates shall prevail for the  
11 50 public improvement.

12 1 Sec. 10. NEW SECTION. 91F.9 RECORDS REQUIRED.

12 2 1. While participating in a public improvement,  
12 3 the contractor and each subcontractor shall do all of  
12 4 the following:

12 5 a. Make and keep, for a period of not less than  
12 6 three years, accurate records of all workers employed  
12 7 by the contractor or subcontractor on the public  
12 8 improvement. The records shall include each worker's  
12 9 name, address, telephone number when available, social  
12 10 security number, trade classification, the hourly

12 11 wages paid in each pay period, the number of hours  
12 12 worked each day, and the starting and ending times of  
12 13 work each day.

12 14 b. Submit weekly a certified payroll to the public  
12 15 body in charge of the public improvement. The  
12 16 certified payroll shall consist of a complete copy of  
12 17 the records identified in paragraph "a". The  
12 18 certified payroll shall be accompanied by a statement  
12 19 signed by the contractor or subcontractor which avers  
12 20 that the records are true and accurate and the hourly  
12 21 wages paid to each worker are not less than the  
12 22 prevailing wage rate required by this chapter.

12 23 2. The public body in charge of the public  
12 24 improvement shall keep the records submitted in  
12 25 accordance with subsection 1, paragraph "b", for a  
12 26 period of not less than three years. The records  
12 27 shall be considered public records and be made  
12 28 available in accordance with chapter 22.

12 29 3. The contractor and each subcontractor shall  
12 30 make available for inspection the records identified  
12 31 in subsection 1, paragraph "a", to the public body in  
12 32 charge of the public improvement, its officers and  
12 33 agents, and to the division.

12 34 4. For the purpose of verifying the accuracy of  
12 35 the records submitted pursuant to this section, the  
12 36 contractor and each subcontractor shall make its  
12 37 workers available at the site of the public  
12 38 improvement for interview by the public body in charge  
12 39 of the public improvement, its officers and agents,  
12 40 and the division.

12 41 5. Contractors and subcontractors performing work  
12 42 on public improvements subject to this chapter shall  
12 43 post the prevailing wage rates for each craft,  
12 44 classification, or type of workers involved in the  
12 45 public improvement in a prominent and easily  
12 46 accessible place at the site of the public improvement  
12 47 or at the place or places used by the contractor or  
12 48 subcontractor to pay workers their wages.

12 49 Sec. 11. NEW SECTION. 91F.10 POWERS OF  
12 50 COMMISSIONER.

13 1 The commissioner shall do all of the following:

13 2 1. Inquire diligently about any complaint of a  
13 3 violation of this chapter, institute actions for  
13 4 penalties prescribed, and enforce generally the  
13 5 provisions of this chapter.

13 6 2. Sue for injunctive relief against the awarding  
13 7 of a contract, the undertaking of a public  
13 8 improvement, or the continuation of a public  
13 9 improvement when the prevailing wage rate requirements  
13 10 of this chapter have not been met.

13 11 3. Investigate and ascertain the wages of workers  
13 12 engaged in any public improvement in this state.

13 13 4. a. Enter and inspect the place of business or  
13 14 employment of a contractor, subcontractor, or workers  
13 15 employed on a public improvement in this state, for  
13 16 the purpose of examining and inspecting books,  
13 17 registers, payrolls, and other records of a contractor  
13 18 or subcontractor that in any way relate to or have a  
13 19 bearing upon the question of wages, hours, and other  
13 20 conditions of employment of workers covered under this  
13 21 chapter.

13 22 b. Copy the books, registers, payrolls, and other  
13 23 records as the commissioner or the commissioner's  
13 24 authorized representative deems necessary or  
13 25 appropriate.

13 26 c. Question the workers for the purpose of  
13 27 ascertaining whether the provisions of this chapter  
13 28 have been and are being complied with.

13 29 d. Administer oaths, take or cause to be taken  
13 30 depositions of witnesses, and require by subpoena the  
13 31 attendance and testimony of witnesses and the  
13 32 production of all books, registers, payrolls, and  
13 33 other evidence relative to the matter under  
13 34 investigation or hearing.

13 35 5. Require from a contractor or subcontractor full  
13 36 and correct statements in writing, including sworn  
13 37 statements, with respect to wages, hours, names,  
13 38 addresses, and other information pertaining to its  
13 39 workers and their employment, as the commissioner or  
13 40 the commissioner's authorized representative may deem  
13 41 necessary or appropriate.

13 42 6. Require a contractor or subcontractor to file,  
13 43 within ten days of receipt of a request, any records  
13 44 enumerated in subsections 3 and 4, sworn as to their  
13 45 validity and accuracy as required by subsection 5. If  
13 46 the contractor or subcontractor fails to provide the  
13 47 requested records within ten days, the commissioner  
13 48 may direct, within fifteen days after the end of the  
13 49 ten-day period, that the fiscal or financial officer  
13 50 charged with the custody and disbursements of the  
14 1 funds of the public body, which contracted for  
14 2 construction of the public improvement or undertook  
14 3 the public improvement, to immediately withhold from  
14 4 payment to the contractor or subcontractor up to  
14 5 twenty-five percent of the amount to be paid to the  
14 6 contractor or subcontractor under the terms of the  
14 7 contract or written instrument under which the public  
14 8 improvement is being performed. The amount withheld  
14 9 shall be immediately released upon receipt by the  
14 10 public body of a notice from the commissioner  
14 11 indicating that the request for records as required by  
14 12 this section has been satisfied.

14 13 7. If a contractor or subcontractor fails to  
14 14 provide requested records in accordance with  
14 15 subsection 6 within ten days, direct, within fifteen  
14 16 days after the end of the ten-day period, the fiscal  
14 17 or financial officer charged with the custody and  
14 18 disbursements of the funds of the public body, which  
14 19 contracted for construction of the public improvement  
14 20 or undertook the public improvement, to pay directly  
14 21 to workers employed by the contractor or subcontractor  
14 22 from the amount withheld from the contractor or  
14 23 subcontractor pursuant to subsection 6 any prevailing  
14 24 wage rates found to be due and payable to the workers.

14 25 8. Contract with a person registered as a public  
14 26 accountant under chapter 542 to conduct an audit of a  
14 27 contractor, subcontractor, or public body.

14 28 Sec. 12. NEW SECTION. 91F.11 NOTICE OF  
14 29 VIOLATIONS.

14 30 1. For purposes of this section:

14 31 a. "Accurate records" means the payroll records  
14 32 required to be filed with the public body in charge of  
14 33 the public improvement as required by section 91F.9.  
14 34 "Accurate records" also means the hourly rate of  
14 35 contribution and costs paid for fringe benefits and  
14 36 whether the contributions and costs of the fringe  
14 37 benefits were paid into a fund or paid directly to the  
14 38 worker.

14 39 b. "Decision" means a determination by the  
14 40 division that a single violation of this chapter has  
14 41 occurred, warranting the commissioner to issue a  
14 42 notice of violation to a contractor or subcontractor.

14 43 c. "Notice of second violation" is a formal  
14 44 written notice issued by the division advising a  
14 45 contractor or subcontractor that a second or  
14 46 subsequent violation has occurred within three years  
14 47 from the date of the notice of a first violation.

14 48 d. "Notice of violation" means a formal written  
14 49 notice issued by the division to a contractor or  
14 50 subcontractor that the division has made a decision  
15 1 that the contractor or subcontractor has violated this  
15 2 chapter.

15 3 e. "Violation" means a written decision by the  
15 4 division that a contractor or subcontractor has done  
15 5 one of the following:

15 6 (1) Failed or refused to pay the prevailing wage  
15 7 rate to one or more workers as required by this  
15 8 chapter.

15 9 (2) Failed to keep accurate records as required by  
15 10 this chapter.

15 11 (3) Failed to produce for the division accurate  
15 12 records or produced records not in compliance with  
15 13 this chapter.

15 14 (4) Refused to submit records or testimony to the  
15 15 division in response to a subpoena issued in  
15 16 accordance with this chapter.

15 17 (5) Refused to comply with the certified payroll  
15 18 provision of section 91F.9.

15 19 (6) Refused the division access, at any reasonable  
15 20 hour at a location within the state, to inspect the  
15 21 contractor's or subcontractor's records as required by  
15 22 this chapter.

15 23 (7) Failed to insert into each subcontract or  
15 24 lower-tiered subcontract and into the public  
15 25 improvement specifications for each subcontract or  
15 26 lower-tiered subcontract or provide a written  
15 27 instrument if no contract exists, a written  
15 28 stipulation that not less than the prevailing wage  
15 29 rate be paid as required by this chapter, and a  
15 30 statement that if it is found that a subcontractor's  
15 31 workers engaged in the public improvement have been  
15 32 paid at a rate of wages less than the prevailing wage  
15 33 rate required to be paid by the contract, the public  
15 34 body shall terminate the subcontractor's right to  
15 35 proceed with the work.

15 36 (8) Failed to obtain a bond in the proper amount  
15 37 that guarantees the payment of the prevailing wage  
15 38 rates required in the contract.

15 39 (9) Failed to post the prevailing wage rates as  
15 40 required by this chapter.

15 41 2. After receipt of a complaint or on the  
15 42 division's initiative, the commissioner shall review  
15 43 the investigative file to determine whether a  
15 44 violation has occurred for which the contractor or  
15 45 subcontractor must be given notice. All information  
15 46 and observations made during an audit or investigation  
15 47 shall be considered and shall constitute the basis for  
15 48 the division's decision that this chapter has been  
15 49 violated and that a notice of violation is required to  
15 50 be issued. The notice of violation shall identify the  
16 1 specific violation and the amount of moneys estimated  
16 2 due the division and in controversy based on reasons  
16 3 contained in the investigative file.

16 4 3. In making a decision that a contractor or  
16 5 subcontractor has failed to allow the commissioner  
16 6 access to accurate records, the commissioner shall  
16 7 rely on the information contained in the investigative  
16 8 file, the certified payroll records filed with the  
16 9 public body in charge of the public improvement or any  
16 10 other information, and shall assess a separate  
16 11 violation for each day worked by each worker on the  
16 12 public improvement. Each decision of a separate  
16 13 violation shall be listed in the notice of violation.

16 14 4. In determining that this chapter has been  
16 15 violated and that the issuance of a notice of  
16 16 violation is required, the commissioner shall base the  
16 17 decision on one or any combination of the following  
16 18 reasons:

16 19 a. The severity of the violations, which includes  
16 20 the following:

16 21 (1) The amount of wages that are determined to be  
16 22 underpaid pursuant to this chapter.

16 23 (2) The activity or conduct complained of that  
16 24 violates the requirements of this chapter and was not  
16 25 merely a technical, nonsubstantive error. Examples of  
16 26 a technical error include but are not limited to a  
16 27 mathematical error, bookkeeping error, transposition  
16 28 of numbers, or computer or programming error.

16 29 b. The nature and duration of the present  
16 30 violation and the prior history of the contractor or  
16 31 subcontractor related to this history. The prior  
16 32 history considered shall not exceed seven years before  
16 33 the date of the notice of violation.

16 34 c. Whether the contractor or subcontractor filed  
16 35 certified payroll records with the public body in  
16 36 charge of the public improvement; whether the  
16 37 contractor or subcontractor has kept payroll records  
16 38 and accurate records for three years; and whether the  
16 39 contractor or subcontractor produced certified payroll  
16 40 records in accordance with section 91F.9.

16 41 d. Whether the contractor or subcontractor has  
16 42 violated any other provision of this chapter.

16 43 5. The notices of the first, second, and  
16 44 subsequent violations shall be sent by restricted  
16 45 certified mail, addressed to the last known address of  
16 46 the contractor or subcontractor involved. The notices  
16 47 shall contain a reference to the specific provisions  
16 48 of this chapter alleged to have been violated,  
16 49 identify the particular public improvement involved,  
16 50 identify the conduct complained of, and identify  
17 1 whether the notice is a first, second, or subsequent  
17 2 notice, and include a contractor's or subcontractor's  
17 3 statement of liabilities.

17 4 Sec. 13. NEW SECTION. 91F.12 VIOLATIONS ==  
17 5 REMEDIES.

17 6 1. If the commissioner determines that a public  
17 7 body has divided a public improvement into more than  
17 8 one contract for the purpose of avoiding compliance  
17 9 with this chapter, the commissioner shall issue an  
17 10 order compelling compliance. In making a  
17 11 determination whether a public body has divided a  
17 12 public improvement into more than one contract for the  
17 13 purpose of avoiding compliance with this chapter, the  
17 14 commissioner shall consider all of the following:

17 15 a. The physical separation of the public  
17 16 improvement structures.

17 17 b. The timing of the work on the public  
17 18 improvement phases or structures.

17 19 c. The continuity of public improvement  
17 20 contractors and subcontractors working on public  
17 21 improvement parts or phases.

17 22 d. The manner in which the public body and the  
17 23 contractor and subcontractors administer and implement  
17 24 work on the public improvement.

17 25 2. A worker employed by the contractor or  
17 26 subcontractor who is paid less than the prevailing  
17 27 wage rate in accordance with this chapter shall have a  
17 28 private right of action for the difference between the  
17 29 amount so paid and the prevailing wage rate in  
17 30 accordance with this chapter, together with costs and  
17 31 reasonable attorney fees as shall be allowed by the  
17 32 court.

17 33 3. The contractor or subcontractor shall  
17 34 additionally be liable to the department for fifty  
17 35 percent of the underpayments and shall be additionally  
17 36 liable to the worker for punitive damages in an amount  
17 37 equal to five percent of the liability to the division  
17 38 for underpayments for each month following the date of  
17 39 payment during which underpayments remain unpaid,  
17 40 together with costs and reasonable attorney fees as  
17 41 shall be allowed by the court.

17 42 4. If a second or subsequent action to recover  
17 43 underpayments is brought against a contractor or  
17 44 subcontractor within a three-year period and the  
17 45 contractor or subcontractor is found liable for  
17 46 underpayments to a worker, the contractor or  
17 47 subcontractor shall be liable to the division for  
17 48 seventy-five percent of the underpayments payable as a  
17 49 result of the second or subsequent action,  
17 50 additionally liable for ten percent of the amount of  
18 1 the liability to the division for underpayments for  
18 2 each month following the date of payment during which  
18 3 the underpayments remain unpaid, and liable for triple  
18 4 the difference between the amount so paid to the  
18 5 worker and the prevailing wage rate required by this  
18 6 chapter, together with costs and reasonable attorney  
18 7 fees as shall be allowed by the court. The three-year  
18 8 period begins to run from the date the contractor or  
18 9 subcontractor is determined liable for the first  
18 10 violation.

18 11 5. The commissioner and any interested party shall  
18 12 also have a right of action on behalf of a worker who  
18 13 has a right of action under this chapter. An action  
18 14 brought to recover the same shall be deemed to be a  
18 15 suit for wages, and all judgments entered in the  
18 16 action shall have the same force and effect as other  
18 17 judgments for wages. At the request of a worker  
18 18 employed by a contractor or subcontractor who is paid  
18 19 less than the prevailing wage rate required by this  
18 20 chapter, the commissioner may take an assignment of  
18 21 the wage claim in trust for the assigning worker and  
18 22 may bring any legal action necessary to collect the  
18 23 claim, and the contractor or subcontractor shall be  
18 24 required to pay the expenses of the division incurred  
18 25 in collecting the claim.

18 26 6. In circumstances where a worker may not be  
18 27 available to receive a payment or judgment, the  
18 28 payment due the worker shall revert to the division  
18 29 after one year elapses from the time payment was  
18 30 attempted to be made or judgment was rendered.

18 31 7. It is a violation of this chapter for a  
18 32 contractor or a subcontractor to do any of the  
18 33 following:

18 34 a. To request or demand, either before or after

18 35 the worker is engaged, that a worker pay back, return,  
18 36 donate, contribute, or give any part or all of the  
18 37 worker's wages, salary, or thing of value, to any  
18 38 person, upon the statement, representation, or  
18 39 understanding that failure to comply with the request  
18 40 or demand will prevent the worker from procuring or  
18 41 retaining employment.

18 42 b. To directly or indirectly pay, request, or  
18 43 authorize any other person to violate this chapter.

18 44 This subsection does not apply to an agent or  
18 45 representative of a duly constituted labor  
18 46 organization acting in the collection of dues or  
18 47 assessments of the organization.

18 48 8. In addition to other penalties provided under  
18 49 this chapter, whoever induces a worker working on a  
18 50 public improvement subject to this chapter to give up  
19 1 or forego any part of the prevailing wage rates to  
19 2 which the worker is entitled under this chapter by  
19 3 threat not to employ or by threat of dismissal from  
19 4 employment is guilty of a serious misdemeanor. An  
19 5 agreement between the worker and the contractor or  
19 6 subcontractor to work for less than the prevailing  
19 7 wage rate in accordance with this chapter shall not be  
19 8 a defense to criminal prosecution.

19 9 9. a. A contract shall not be awarded to a  
19 10 contractor or subcontractor who, on two separate  
19 11 occasions within a three-year period, has been  
19 12 determined to have violated this chapter, or to any  
19 13 firm, corporation, partnership, or association in  
19 14 which the contractor or subcontractor has any interest  
19 15 until five years have elapsed from the date on which a  
19 16 final determination is rendered finding the contractor  
19 17 or subcontractor in violation of this chapter.

19 18 b. For the purposes of this subsection, "any  
19 19 interest" means an interest in the entity bidding or  
19 20 performing work on the public improvement, whether as  
19 21 an owner, partner, officer, manager, employee, agent,  
19 22 consultant, or representative. "Any interest"  
19 23 includes but is not limited to all instances where the  
19 24 barred contractor or subcontractor receives payments,  
19 25 whether cash or any other form of compensation, from  
19 26 any entity bidding or performing work on the public  
19 27 improvement, or enters into a contract with the entity  
19 28 bidding or performing work on the public improvement  
19 29 for services performed or to be performed under  
19 30 contract that have been or will be assigned or sublet,  
19 31 or for vehicles, tools, equipment, or supplies that  
19 32 have been or will be sold, rented, or leased during  
19 33 the period from the initiation of the barring  
19 34 proceedings until the end of the term of the barring  
19 35 period. "Any interest" does not include shares held  
19 36 in a publicly traded corporation if the shares were  
19 37 not received as compensation after the barring of an  
19 38 entity bidding or performing work on a public  
19 39 improvement.

19 40 10. If the division determines that a contractor  
19 41 or subcontractor has violated this chapter on two  
19 42 separate occasions within a three-year period, the  
19 43 division shall list on the department of workforce  
19 44 development's website and keep on record the name of  
19 45 the contractor or subcontractor and give notice by  
19 46 restricted certified mail of the list to any public  
19 47 body requesting the list.

19 48 11. Upon a determination that a contractor or  
19 49 subcontractor has violated this chapter on two  
19 50 separate occasions within a three-year period, the  
20 1 division shall notify the violating contractor or  
20 2 subcontractor by restricted certified mail. The  
20 3 contractor or subcontractor has ten working days to  
20 4 request of the division a hearing before an  
20 5 administrative law judge on the alleged violation.  
20 6 Failure to respond within ten working days shall  
20 7 result in automatic and immediate barring of the  
20 8 violator from work and placement and publication of  
20 9 the violator's name on the department of workforce  
20 10 development's website. If the contractor or  
20 11 subcontractor requests a hearing within ten working  
20 12 days by restricted certified mail, the department of  
20 13 inspections and appeals shall set a hearing before an  
20 14 administrative law judge on the alleged violation.  
20 15 The hearing shall take place no later than forty-five

20 16 calendar days after the receipt by the division of the  
20 17 request for a hearing. An action by an administrative  
20 18 law judge constitutes final agency action and is  
20 19 subject to judicial review under section 17A.19.  
20 20 12. The attorney general shall prosecute the cases  
20 21 identified in this section upon complaint by the  
20 22 commissioner or by any interested person. In any  
20 23 proceeding brought pursuant to this section, the  
20 24 commissioner shall be represented by the attorney  
20 25 general.

20 26 Sec. 14. NEW SECTION. 91F.13 APPRENTICES.  
20 27 This chapter shall not prevent the employment of  
20 28 apprentices upon public improvements. However, an  
20 29 apprentice employed on a public improvement must be  
20 30 registered with the United States department of  
20 31 labor's bureau of apprenticeship and training under an  
20 32 apprenticeship program registered with that bureau,  
20 33 paid the proper wages specified in the standards of  
20 34 apprenticeship, and engaged only in the trade to which  
20 35 the apprentice is registered. If the apprentice is  
20 36 employed on a public improvement in a trade to which  
20 37 the apprentice is not registered with the United  
20 38 States department of labor's bureau of apprenticeship  
20 39 and training, the apprentice shall be treated as any  
20 40 other worker under this chapter.

20 41 Sec. 15. IMPLEMENTATION OF ACT. Section 25B.2,  
20 42 subsection 3, shall not apply to this Act.>  
20 43 #2. Title page, line 1, by inserting after the  
20 44 word <to> the following: <school infrastructure and>.  
20 45 #3. Title page, line 6, by striking the words  
20 46 <providing a penalty> and inserting the following:  
20 47 <requiring the payment of prevailing wage rates for  
20 48 school district improvements, providing penalties,>.  
20 49 #4. By renumbering as necessary.

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